

**Testimony of
Bob LaBrant, Commissioner
Michigan Employment Relations Commission
On Senate Bill 316**

*Before the Senate Elections & Government Reform Committee
September 8, 2016*

Mr. Chairman and Committee Members:

Currently Section 3(7) of the Open Meetings Act (OMA) exempts certain quasi-judicial state commissions and boards while deliberating on the merits of a case. They include:

Worker's Compensation Appeal Board
Employment Security Board of Review
State Tenure Commission
Public Service Commission

In addition, the OMA enacted in 1976, provides that an arbitrator or an arbitration panel appointed by the Michigan Employment Relations Commission while deliberating on the merits of a case is also exempt. However, Section 3 (7) only exempts arbitrators not MERC itself. S.B. 316 corrects that 40-year old drafting error, as well as reflects, the 2011 Executive Order merging the Employment Security Board of Review with the Worker's Compensation Appeal Board to become the Michigan Compensation Appellate Commission.

The Michigan Employment Relations Commission (MERC) is a bi-partisan three-member quasi-judicial body (comprised of a commission chair and two other commissioners) each appointed by the governor for a term of three-years with the advice and consent of the senate. I am a MERC Commissioner. I was first appointed in 2012 and re-appointed in 2015.

MERC adjudicates violations of the Michigan Public Employment Relations Act (PERA). Among the types of cases decided by MERC are unfair labor practices charges brought against a public employer or against a labor union. An administrative law judge (ALJ) of the Michigan

Administrative Hearing System (MAHS) first hears those charges. If an appeal is filed, the three commissioners review the ALJ's proposed opinion. The Commission may affirm, reverse, or modify the ALJ's proposed opinion and recommended order. MERC's final order may be appealed directly to the Michigan Court of Appeals.

The Commissioners do not work out of state offices. These are part-time positions. One of my former colleagues, Nino Green, lived in Escanaba in the Upper Peninsula. The Commission meets monthly--generally six times in Detroit and six times in Lansing each year. It is only at these open meetings that a commissioner can talk with his or her colleagues about a pending case or how a proposed opinion should be written.

With a three-member commission, two commissioners constitute a quorum. All conversations of two or more Commissioners, whether in person, over the telephone or by e-mail trigger the requirements of the Open Meetings Act (OMA) that all deliberations of a public body, unless exempt, take place at a properly noticed open meeting.

Mr. Chairman, earlier in your public service career, I recall you were appointed Chair of the Employment Security Board of Review. That was a five-member body. Three members, not two, constituted a quorum. But more importantly, you could deliberate with all your Board colleagues, outside of an open meeting, in an effort to reach a consensus or modify the language of an opinion or order because of the Board of Review's statutory exemption in Section 3(7).

The State Tenure Commission also has five Commissioners along with a statutory exemption from the OMA as it deliberates on the merits of a case.

The new Michigan Compensation Appellate Commission has nine commission members. Five Commissioners, not two, constitutes a quorum. It also has a statutory exemption from the OMA as it deliberates on the merits of a case.

The Public Service Commission, like MERC, is made up of three commissioners and two Commissioners constitute a quorum. Unlike

MERC, the PSC has a statutory exemption from the OMA as the Public Service Commissioners deliberate the merits of a case.

A similar exemption permitting MERC to deliberate on the merits of a pending case outside of a posted open meeting would encourage a free flow and exchange of ideas between Commissioners and staff. It would also assist in avoiding protracted delays in Commission deliberations and the issuance of decisions, particularly those of a complex nature.

I urge this Committee to report out S.B. 316 favorably and recommend its passage by the Senate.